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# THE INTERIM

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## TVMT NEWS BULLETIN

**Milestones and Achievements...**"TVMT" is the name Legislative Services staff has adopted for the public affairs television project established by the Montana Legislature in 2001, through passage of HB 144. The momentum to effectively implement the project is building. In the past several months, a number of important milestones have been passed, the most important of which was the Legislative Council's decision to allocate some information technology funds to the project. Raising money is a work in progress, and most of the effort to come will be concentrated on transmission and distribution costs, so that citizens outside the Helena area will be able to tune in and participate. Recent achievements and upcoming tasks are as follows:

- The League of Women Voters has decided to make TVMT one of its top priorities in the upcoming legislative session. The main challenge will be to increase and sustain the requisite funding for what will become a highly valued public service, but maintaining non-partisan, unpoliticized governance of programming is also essential.
- The Greater Montana Foundation has awarded \$7,000 to the project in support of an educational documentary about the legislative process and an innovative music video package called "The Jazz Session".
- Several business groups and associations are weighing the public relations and tax benefits of underwriting production and distribution costs.
- A moribund satellite dish receiver atop the heating plant building is being retrofitted to allow the capture of a 24-hour news channel signal that will be piped into the Capitol through the TVMT cable system.
- A fiber optic transmission connection between the Capitol and AT&T Broadband's Helena headquarters is in the works and will be completed this summer.

Legislative Services Division staff, with assistance from the Procurement Bureau at the Department of Administration, is issuing a contract to a private company to supply, install, test, and maintain a substantial array of television equipment in the Capitol and the

nearby "head end" control room.

In July and August, staff will prepare and issue a Request for Proposals to provide production services during the 2003 session and the subsequent interim.

**Next Phase: 2003 Session...**A Capitol-based contract production crew will routinely videotape and broadcast two events simultaneously. Daily coverage will include 2-4 committee hearings as well as House and Senate floor sessions. Proceedings in the House and Senate chambers and in Room 303 (the old Supreme Court) will be covered using robotic cameras; other hearings will be captured using mobile video production carts. Legislative Services staff, in consultation with the Legislative Council and House and Senate staff, will determine which committee hearings and which bills will be covered on a week-to-week basis. The gavel-to-gavel production is governed by statute, with Legislative Council oversight (5-11-1111, MCA).

The unedited televised proceedings will be distributed within the building and to Helena area cable subscribers through HCTV, a local community access station. An hour-long weekly digest of legislative activity will be distributed over Montana PBS. Legislative leaders, as well as other individual members of the House and Senate, will be invited on occasion to discuss their proposals and to reflect on the legislative process in an interview format.

With sufficient funding and in-kind support from private contributors, the gavel-to-gavel service and related programming will also be transmitted to a number of schools in north-central and eastern Montana over the VisionNet system, and to community access TV stations in Billings, Missoula, and Great Falls as well as other stations across the state via satellite uplink and downlink to cable head ends. Audio coverage of floor sessions and many hearings will also be distributed to computer users over the Internet.

## LEGISLATIVE AUDIT DIVISION

**Audit Division Meets in June...**The Legislative Audit Committee met June 14, 2002, in Room 102 in the Capitol. The following reports were presented:

### FINANCIAL-RELATED AUDIT

**The University of Montana---All Campuses (02-10B)...**A financial-related audit, as defined in generally accepted government auditing standards, was conducted on all campuses of the University of Montana for the fiscal year ended June 30, 2001. The auditing standards define financial-related audits as determining whether (1) financial information is presented in accordance with established or stated criteria, (2) the entity has adhered to specific financial compliance requirements, or (3) the entity's internal control structure over financial reporting and/or safeguarding assets is suitably designed and implemented to achieve the control objectives. These audits may include, for example, audits of internal controls over compliance with laws and regulations over federal programs or audits of compliance with laws and regulations and allegations of fraud.

The report contained six recommendations addressing areas where the University of Montana can improve its financial accountability and internal controls, including issues relating to compensatory time and wage withholding, and its compliance with state and federal laws and regulations relating to contracts, leave pool rates, and properly reporting information on its accounting records. In addition, there is a disclosure issue related to controls over travel advances and reimbursements.

## PERFORMANCE AUDIT

Montana Board of Veterans' Affairs, Montana Division of Veterans' Affairs (02P-07)...At the request of the interim Subcommittee on Veterans' Affairs, the Legislative Audit Committee recommended a performance audit of the Montana Board of Veterans' Affairs (Board) and the Montana Veterans' Affairs Division (MVAD). The federal government provides a range of benefits to qualified veterans discharged from military service. The Board/MVAD is responsible for assisting veterans who are applying for these benefits. We found MVAD assists veterans and their families with the application process by providing services statewide as required by Montana law and by promoting the general welfare of veterans. The audit report included the following recommendations:

- Seek legislation to revise statute to reflect cemetery oversight by the Board/MVAD.
- Upgrade management information and communications systems to improve services.
- Evaluate staff travel efficiency and develop alternatives for providing rural outreach.
- Establish procedures for comprehensive claims processing quality control.
- Establish policy for key activities.
- Consolidate technician and officer classification.
- Provide additional training and formalize a mentoring methodology.
- Evaluate workload to assess staff activities and work priorities.

## CONTRACT AUDITS

Montana Employee Benefit Plan--Analysis and Evaluation of Claims Processing, State of Montana and Montana University System (02C-08)...Under contract with the Legislative Auditor's Office, Wolcott & Associates, Inc., conducted the special purpose audit of Montana Employee Benefit Plan, administered by the Department of Administration, and the Montana University System Benefit Plan, administered by the Office of the Commissioner of Higher Education, for the two calendar years ended December 31, 2001.

The audit was performed based on the services requested and agreed upon in the audit contract. Claim payment accuracy was based upon the provisions in the documents describing the medical care and dental care benefits plan of each plan sponsor.

Three recommendations were made regarding lifetime maximum, office visit copayments, and case management.

Montana Medical Legal Panel (02C-01)...Under contract with the Legislative Auditor's Office, Henry Fenton, CPA, conducted the audit of the Montana Medical Legal Panel for the two years ended December 31, 2001.

One recommendation was made regarding more closely monitoring deposit balances to avoid exceeding the insurance limits.

Audit Committee to Meet in November...The next Legislative Audit Committee meeting is tentatively scheduled for Nov. 18-19, 2002, in Room 137 of the state Capitol.

## STATE-TRIBAL RELATIONS COMMITTEE

Committee Visits Reservation...The State-Tribal Relations Committee visited the Confederated Salish and Kootenai Reservation on June 11 and 12 in fulfillment of its responsibility to serve as a liaison with Montana's Indian tribes. The committee met first with the tribal council. Although there was not a specific agenda, the two groups shared their thoughts on issues common to the state and the Salish and Kootenai Tribes. The tribal council expressed concern over the proposed state budget reductions affecting children and families. There was also considerable discussion about economic development, education, and water rights.

Committee Tours Salish Kootenai College...Following the meeting with the tribal council, the committee toured Salish Kootenai College and met with some college students. Salish Kootenai College began as a two-year community college, but now offers baccalaureate degrees in nursing, environmental science, human services, and business/entrepreneurship. The campus has grown to 14 buildings with a new science building under construction. The college also has a limited number of student housing units. The most recent addition to the college is a nine-hole golf course laid out by a golf professional and built by construction trades students at the college.

The students who met with the committee were nonbeneficiary students. Nonbeneficiary students are generally non-Indians although American Indian descendants are also considered nonbeneficiary students. About 35 percent of the college's enrollment are nonbeneficiary students. The college receives funding from the federal government for students who are enrolled tribal members, but there is no federal funding for nonbeneficiary students. For the past several years, the Legislature has intermittently provided funding through the Board of Regents for nonbeneficiary students at tribal colleges across the state. The nonbeneficiary students at Salish Kootenai College spoke to the committee about the importance of the college and how they would not have been able to get a postsecondary education were it not for Salish Kootenai College. The students urged the committee to provide funding for nonbeneficiary students.

Tribal Businesses Included on Tour...Before the visit, committee members expressed interest in looking at economic development projects on the reservation. The committee toured the KwaTaqNuk Resort, S&K Electronics, S&K Holding, and S&K Technologies.

KwaTaqNuk is a tribally-owned resort on Flathead Lake in Polson. The resort operates tour boats on the lake and has meeting and convention facilities. The resort is working to become a destination resort. It has made arrangements with local golf courses and ski areas to offer recreational and accommodations packages.

S&K Electronics is another tribally-owned business that specializes in electronics technology. The business employs college-trained engineers as well as certified electronics technicians. S&K Electronics recently opened a branch office in Houston where it does contract work for NASA. Other clients of S&K Electronics include Jore Corporation, Northrop Grumman, Hewlett-Packard, Raytheon, Siemens Medical Systems, and Sun Mountain Sports.

S&K Holding is a company that helps develop new businesses on the reservation. KwaTaqNuk Resort began under the auspices of S&K Holding. The company also operates a wood processing business that makes "stickers" or wooden sticks used between piles of lumber to help in the drying process. The stickers can also be used as survey sticks and sign sticks. The business developed when area lumber mills had to pull workers off the production line to make stickers, resulting in a loss of production time. S&K Holding saw a niche to be filled. S&K Holding is also in the process of developing a marina on some tribally-owned land on Flathead Lake.

S&K Technologies is a spin-off of S&K Electronics. It specializes in information technology such as software development, data conversion and migration, support services for natural resource information and coastal engineering, web site design, electronic technical publishing, and space operations support. Located in St. Ignatius, S&K Technologies also has branch offices in Washington, Texas, Ohio, and Georgia.

**Committee Hears About Tribal TANF...**The Salish and Kootenai Tribes have operated their own Temporary Assistance to Needy Families program since 1998. The program is very service-oriented. The Department of Human Resources Development (DHRD) administers TANF and has also established a "one-stop shop" concept for supportive services. Almost all of the supportive services that a family needs are available in a single building on the reservation. For services such as food stamps and low-income energy assistance that the DHRD does not administer, Lake County provides a worker on the reservation.

DHRD has worked hard to identify areas where clients need services. Two of those areas are computer training and transportation. As a result, DHRD has created a computer-training program that utilizes a mobile computer training lab and an adult drivers' education program that may lead to a driver's license.

In addition to providing services to its clients, DHRD also has established good working relationships with reservation employers and day care operators. For example, DHRD worked with S&K Holding to get a welfare-to-work grant. Day care is a key component to a successful TANF program, and DHRD provides training and resources to day care operators on the reservation.

Emphasis is also placed on breaking the welfare cycle by working with children and youth. School attendance is monitored with provisions for rewards as well as penalties. Clients are required to engage in literacy activities with their children for 10 hours a week. Youth employment is a priority. If young people can have a successful work experience, they are less likely to become TANF clients as adults.

Committee members were impressed with the success of the program and its ability to adapt to the needs of its clients. The tribe decided early on not to take money from the state for the program because of the administrative paperwork involved.

Visits to All Seven Reservations...With the trip to the Confederated Salish and Kootenai Reservation, the committee or its predecessors (Committee on Indian Affairs and the Law, Justice, and Indian Affairs Committee) have visited all seven of Montana's Indian reservations. The committee will begin a second round of visits next interim.

Committee Requests Bills...Following the visit to S&K Technologies, the committee requested that staff begin work on six bill draft requests to:

- ? ensure funding for nonbeneficiary students;
- ? establish business information centers at community colleges, and expand services at Tribal Business Information Centers;
- ? build a prerelease center on an Indian reservation using Health Care Authority funding;
- ? require the Department of Corrections to hire a Native American traditionalist to serve the spiritual needs of Native American inmates;
- ? mandate that one position on the Parole Board be filled by a Native American; and
- ? request a study of the drop-out problem of American Indian students.

The Committee will meet again in late July to review and finalize the bill drafts. For further information about the Committee, please contact Connie Erickson at (406) 444-3064 or by e-mail at cerickson@mt.gov.

## EDUCATION AND LOCAL GOVERNMENT COMMITTEE

Committee to Meet in July...The Education and Local Government Committee will meet in Helena on July 10 and 11 in Room 137 of the Capitol. The meeting will begin at 1 p.m. on July 10 and at 8 a.m. on July 11. The agenda will include the following:

- a presentation by Chief Justice Karla Gray on state assumption of District courts;
- presentations by MACo and the League of Cities and Towns on possible local government legislation for the next session;
- preparation of final recommendations on school funding for Gov. Martz; and
- review of agency legislation.

The HJR 41 Subcommittee will meet on July 10 at 9:30 a.m. in Room 137 of the Capitol. The subcommittee will work on the bill draft related to the transfer of school territory and report its progress to the full committee on July 11.

For more information about the meeting, please contact Connie Erickson at (406) 444-3064 or by e-mail at cerickson@mt.gov.

## DISTRICTING AND APPORTIONMENT COMMISSION

Commission Adopts Regional Plan...On June 17, the Districting and Apportionment Commission tentatively adopted Plan 300, as amended, for the southwest region of the state. The plan includes legislative districts in Stillwater, Sweet Grass, Wheatland, Golden Valley, Musselshell, Park, Gallatin, Broadwater, Lewis and Clark, Jefferson, Madison, Beaverhead, Butte/Silver Bow, Anaconda/Deer Lodge, Powell, and Granite counties. Amendments were adopted for districts in Gallatin and Butte/ Silver Bow counties. Other amendments may be considered at a later date.

Western Region Meetings Scheduled...The commission scheduled public hearings on legislative districts in the western region of the state as follows:

### August 12, 2002

Kalispell 7p.m.

### August 13, 2002

Pablo, 1 p.m.

Missoula, 7 p.m.

In the last week of July, western region maps, descriptions, and staff analysis will be sent to county clerk and recorders, central committees, legislators, and legislative candidates in the region. The commission will accept written testimony on the proposals through Sept. 3, 2002, and will tentatively adopt a plan for this region on Sept. 16.

Regional Information Available on Commission Website...Regional maps of the proposals and adopted legislative districts for the north-central, northeast, southeast/central, south-central, and southwest regions are available through the "Redistricting" link on the legislative branch website. Maps for the western region should be on the website by the end of July.

Dates to Remember...The following schedule shows the timeline for completing the redistricting plan for the state:

<b>Aug. 12-13:</b>	Western Region Public Hearings: Aug 12 - Kalispell, Aug. 13 - Pablo, Missoula
<b>Sept. 3:</b>	Written testimony and amendments due on the western region
<b>Sept. 16:</b>	Executive session: adopt western region, Helena
<b>Nov. 5:</b>	Election Day (1993 plan still in effect)
<b>Nov. 19-20:</b>	Hearing on pairing of House districts for Senate districts, Helena (meeting date will be coordinated with legislative caucuses).
<b>Dec. 6</b>	Statutorily required public hearing on all 100 House and 50 Senate Districts, Helena (tentatively scheduled).

The redistricting plan must be submitted to the 58th Legislature by the 10th legislative day and the Legislature has 30 days to comment. The commission then has 30 days to finalize the plan and submit it to the Secretary of State, at which time it will become law. The new legislative districts will be in effect for the 2004 elections.

Comments Solicited...Please send all written testimony and correspondence to the Districting and Apportionment Commission, PO Box 201706, Helena MT 59620. Copies of comments will be sent to each commissioner and the originals retained for the commission's file. Please check the commission's website for more information at the "Redistricting" link on the legislative branch website at [leg.mt.gov](http://leg.mt.gov). For more information, contact Susan Byorth Fox at (406) 444-3064 or [sfox@mt.gov](mailto:sfox@mt.gov).

## CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES COMMITTEE

Committee to Hold Final Meeting in August...The final CFHHS meeting of the interim is scheduled for August 23. The committee is looking at proposing legislation for the next session and has asked staff to provide information on the following issues:

- persons with developmental disabilities and Title 46, chapter 18 regarding criminal procedure and mental disease or defect;
- respite care: wage and hour issues and lifespan respite;
- SJR 22 Subcommittee proposals for a health care policy interim committee; and
- TANF car program update.

The committee will also review DPHHS legislative proposals that have been approved under the executive planning process. The committee will decide on which proposals it will formally request, on behalf of the department, to be drafted for introduction in the next session.

For more information about the committee, please contact Susan Byorth Fox, Research Analyst, at the Legislative Services Division at (406) 444-3597 or at [sfox@mt.gov](mailto:sfox@mt.gov).

## TRANSITION ADVISORY COMMITTEE

Committee to Meet in July...The Transition Advisory Committee will meet at 8:30 a.m. on Friday, July 12, in Room 317 of the state Capitol. Although the agenda has not been finalized, items may include:

- Public Service Commission order related to the default energy supply portfolio
- Public Service Commission guidelines on competition and customer choice
- Energy West, Inc., competitive marketing of electricity supply
- Initiative Measure 145 to buy the dams (tentative)
- Cities, towns, and school districts aggregated energy contracts
- Review of recommendations adopted by the Committee on April 26
- Energy developments affecting large industrial customers
- Clean-coal technology
- Update on NCSL energy conference and other meetings

The inclusion of the initiative measure to buy the dams may depend on whether enough signatures have been certified to put the proposal on the November ballot.

Transmission Subcommittee Meeting Rescheduled to Aug. 9...**The July 11 meeting of the Transmission Subcommittee has been rescheduled for Aug. 9.** The Transmission Subcommittee has been looking at a variety of transmission issues, including the formation of regional transmission organizations. The Federal Energy Regulatory Commission has issued rules calling for utilities within various geographic areas in the United States to combine their transmission grid assets in an attempt to encourage competition in wholesale power markets and to enhance the efficiency of the transmission system. Utilities in the Pacific Northwest, including NorthWestern Energy in Montana, have been working on RTO West. The main focus of the next meeting will be to discuss the status of a recent filing by the utilities with FERC and to examine the implications for Montana. Agenda items for the August meeting may include:

- Status of the Stage 2 RTO filing with the Federal Energy Regulatory Commission
- Comments presented to FERC on Stage 2 filing
- Alternative perspective to RTO West
- Western Area Power Administration transmission study
- Oil sand energy development in Alberta and alternative transmission line proposals to move that energy to the Pacific Northwest
- Synopsis of subcommittee activities and discussion of issues and options

For more information about the Transition Advisory Committee, contact Jeff Martin at (406) 444-3595 or send e-mail to [jmartin@mt.gov](mailto:jmartin@mt.gov). Todd Everts, committee staff attorney, may be reached at (406) 444-3747 or by e-mail at [teverts@mt.gov](mailto:teverts@mt.gov).

## LEGISLATIVE FINANCE COMMITTEE

The June 2002 Meeting The Legislative Finance Committee (LFC) met June 13 and 14. Material presented at the meeting, including the governor's proposed spending reductions and various staff reports, are on the Legislative Fiscal Division (LFD) website at <http://leg.mt.gov/fiscal/index.htm>. For further information, contact Clayton Schenck at [cschenck@mt.gov](mailto:cschenck@mt.gov) or at (406) 444-2986. The first day of the meeting focused entirely on the committee review of a spending reduction plan proposed by the governor's budget director in response to the projected general fund shortfall for the 2003 biennium. On the second day of the meeting, the LFC heard a variety of reports from LFD staff. The highlights follow:

LFC Reviews Budget Director's Spending Reduction Plan...The governor's office issued a spending reduction plan on May 24 in response to a projected general fund deficit for the 2003 biennium and in accordance with the requirements of section 17-7-140, MCA, that requires the governor to ensure a balanced budget. That section also directs the Legislative Finance Committee (LFC) to meet within 20 days from when the

recommendations are made and to provide comments on the executive spending reduction plan prior to the implementation of the reductions.

The LFC met jointly with the Revenue and Transportation Interim Committee on June 13 to consider the plan and heard the LFD analysis of the spending reduction plan (the analysis is available on the LFD website). The LFD analysis assumes a less optimistic economic forecast related to state revenue collections and includes an adjustment for probable wildfire suppression costs this summer. LFD staff said that the plan was vulnerable because it only meets the minimum required ending fund balance; leaves no leeway for further economic downturn; does not take into account potential supplementals for wildfires and other spending pressures; and assumes legislative endorsement of some recommendations in the next session.

The LFC engaged in a lively debate on whether the reductions should be made by the governor, or whether the Legislature should meet in special session to set the priorities for the spending reductions. The LFC review of the proposed reductions included over seven hours of discussion and testimony from LFD staff, the governor's budget director, and agency directors. Members of the public expressed concerns with the spending reduction plan and suggested alternatives.

The LFC then debated how best to respond to the plan, and on a motion adopted on an 8-4 vote, sent a letter to Gov. Martz stating that the LFC generally concurred with the spending reduction plan as presented, but urged the governor to continue to seek to reduce the impact of all reductions. The LFC also encouraged the governor to incorporate as many of the suggestions presented in public testimony as possible in the final directive, aggressively pursue a provider tax option that was presented to the committee as being under consideration by the administration, and resolve legal issues raised by staff with some of the spending reduction proposals prior to implementing those options.

The governor's budget director indicated that the administration will take into consideration the comments of the committee, and was tentatively looking at June 21 to certify the budget deficit and to issue the directive for spending reductions.

Wildfire Supplemental...The Department of Natural Resources and Conservation requested a \$3.5 million transfer of authority for known fiscal year 2002 wildfire costs. The request was to transfer state special revenue appropriation authority from four funds within the Forestry Program in fiscal year 2003 to the current fiscal year. Since these funds lack sufficient cash to meet obligations, the Department of Administration will approve a general fund loan for \$3.5 million.

If approved by the governor, this cash will be placed into the four state special revenue funds and spent for fire suppression costs. Next session, the Legislature will be asked in the supplemental appropriations bill to increase fiscal year 2003 budget authority by at least the transferred amount. If the supplemental appropriation is approved, the general fund loan will be repaid.

LFD staff identified problems with the mechanism used by the Office of Budget and Program Planning to obtain cash and authority to pay fiscal year 2002 fire costs. Those problems include:

- a provision in HB2, adopted at the request of DNRC, may not be valid because it attempts to override substantive law;

- statutory restrictions prevent the use of some of the proposed funding sources to pay for fire costs; and
- an Attorney General's opinion may prohibit a general fund loan because repayment of the loan is contingent upon a supplemental appropriation.

The LFC decided that elements of the supplemental transaction were problematic and has notified the governor that there are statutory compliance issues with the request. For further information, contact Gary Hamel at gahamel@mt.gov or by calling (406) 444-5347.

State Assumption of District Court Costs...Beginning July 1, 2002, the state Supreme Court will be responsible for oversight and administration of Montana's 22 district courts. The new responsibilities of the Supreme Court and the state assumption of district court costs were provided for in SB 176 (Ch. 585, L. 2001). Chief Justice Karla Gray and her staff told the Legislative Finance Committee that implementation efforts are on track. The Judicial Personnel Plan that includes a uniform job classification and compensation system is complete and was approved in early June. Court automation efforts are 93 percent complete with all court field offices having payroll functions, e-mail, and internet access. Information technology needs and variable costs associated with indigent defense, involuntary commitment proceedings, and youth court remain a funding challenge and will be closely monitored by the agency in order to identify future funding needs. For further information, contact Lynn Zanto at lyzanto@mt.gov or (406) 444-5834.

Analysis of Pay Plan 20 (Broadbanding) Budget Impacts...Staff presented a report that analyzed the implementation of the alternative compensation system (the Broadband Plan) in Montana state government. The report identified inconsistencies associated with the implementation and the lack of framework and measures for administering and determining the success of the Broadband Plan. The report estimated that for the 10 agencies that have partially or fully implemented the Broadband Plan, the annualized fiscal impact is roughly \$4 million directly attributed to employee pay adjustments that have occurred under the plan. These adjustments are in addition to the adjustments funded by the Legislature in HB 13. Staff provided options for committee consideration to address the issues identified. The report is available on the Legislative Fiscal Division homepage. Questions on this topic can be directed to Greg DeWitt at gdewitt@mt.gov or (406) 444-5392 or Gary Hamel at gahamel@mt.gov or (406) 444-5347.

Vacancy Savings and Personal Services Budgeting Study...Staff presented a report on vacancy savings and personal services budgeting. The vacancy savings portion of the report provided background information including definitions, historical data, pros and cons, and options for applying vacancy savings. The report concluded that exempting the first 20 FTE from the calculation and continuing to use the personal services contingency fund would be easy to implement and would be a fair method of applying vacancy savings. Under this option, other positions could be exempted such as those in programs that must provide 24-hour/7-days a week coverage.

Personal services budgeting has been a source of concern for legislators for a long time. The current process applies an incremental budgeting approach that is tedious but, in the end, does not give the Legislature much control over growth of personal services costs. For example, management decisions for promotions and position upgrades are automatically built into the base budget without even a cursory review by the Legislature. Many increases are approved directly by the Legislature, but the cumulative impact of various measures or increments are not easily determined until after the money is appropriated and spent. Besides cost of living inflation, there are other forces at work that cause the cost of personal services to increase, some of which the legislature controls and some of which it does not control.

The report discusses the current method of personal services budgeting by describing the process steps and comparing the current budgeting process to alternative philosophies. Pros and cons of the current process are listed. The report proposes an alternative approach (lump-sum budgeting) that would reduce the detailed structure and would focus budget development on discussions of legislative policy and prescribed outcomes for each agency and program. While not a performance-based option, the proposed alternative would encourage more dialogue regarding performance issues and would give the Legislature the authority to make decisions regarding the funding of personal services increases. For further information on this report, contact Jon Moe at jonmoe@smt.gov or Todd Younkin at tyounkin@mt.gov or either by calling (406) 444-2986.

POINTS Subcommittee...Staff presented a report on the progress of the POINTS Subcommittee since its last meeting in May. Staff also summarized the POINTS Subcommittee meeting held the evening before the LFC meeting. According to information presented by the Department of Revenue to the subcommittee, the department is concurrently stabilizing POINTS I and developing POINTS II. POINTS I is scheduled to be stabilized by December 31, 2002, and the plan to achieve this deadline is on track. POINTS II will cost roughly \$1.9 million more than available bonding authority and base operating budget to complete and maintain once implemented. These costs do not include completing the property tax module that was part of the approved system. However, the department has removed that module from the system development scope and does not plan to implement it at this time. The department anticipates submitting a request to the next Legislature for the amount of the funding shortfall needed to complete the system without the property tax module. After defeating a motion to recommend that the department stop development of POINTS II and only work on POINTS I stabilization, the POINTS Subcommittee voted to disband. For further information, contact LFD staff Greg Dewitt.

SB 162 Subcommittee on Revenues Dedicated to Local Government...The subcommittee met on June 12 and discussed the final report of the review activities of this interim. The recommendations of the subcommittee included:

- de-earmarking fines and penalties that are distributed to local governments and increasing the entitlement payment established in HB 124 to offset the loss to local governments;

- depositing the state's share of Taylor Grazing Act revenue for schools directly into the state general fund, thus eliminating the circular flow of revenue between the state and school districts; and
- revising the SB 162 review process so that the Legislature would provide the guidelines for the dedicated revenue, and the various agencies would monitor compliance and report unjustified dedication of revenue to the LFC.

Although submission of the subcommittee's final report to the LFC was deferred until the October meeting, the LFC requested a committee bill draft to implement the recommendations. Subcommittee members are Senator Zook (Chairman), Senator Nelson, Representative Forrester and Representative Kasten. For further information, contact Jon Moe at [jonmoe@mt.gov](mailto:jonmoe@mt.gov) or at (406) 444-4581. Information regarding this subcommittee's activities can be found on the LFD website under the link for subcommittees.

Final Meeting of Postsecondary Education Policy and Budget Subcommittee Set for July 9...The PEPB will wrap up its interim work in July. Agenda items include: Finalize public postsecondary education accountability measures to recommend to the next legislature and review proposed draft legislation establishing a statutory interim committee to conduct an ongoing review of the statewide public postsecondary education policy goals and accountability measures.

The Subcommittee will convene at 10 a.m. on July 9 in Room 102 of the Capitol. For more information about the meeting, please contact Pam Joehler at (406) 444-5386 or send an e-mail to [pjoehler@mt.gov](mailto:pjoehler@mt.gov). Meeting information is also posted on the subcommittee's website at <http://leg.mt.gov>. Just click on "Committees" and follow the links to the Education and Local Government Committee, Postsecondary Education Policy and Budget Subcommittee.

## REVENUE AND TRANSPORTATION COMMITTEE

Storm Clouds Rising...The bleak general fund revenue outlook hung over the June 13 and 14 meeting of the Revenue and Transportation Interim Committee (RTIC) like a bank of bruise-colored thunderclouds so commonly seen in Montana skies during these weeks of early summer.

Legislative Fiscal Division staff had seen the storm coming for months and had been alerting RTIC and the Legislative Finance Committee of the impending revenue shortfall, but all the committees could do was wait and watch and hope for the best: that income tax refund activity would slow down; that perhaps some big-ticket taxpayers or corporations had waited until the last minute to file and that those returns would make a dent in the shortfall; that estimated payments would show some signs of breathing life into the general fund; that somebody would discover a barrel containing millions of dollars buried in their backyard and decide to give it to the state.

April 15 had come and gone, and by the end of the month it was apparent that spending reductions would be necessary. Budget Director Chuck Swysgood started the

wheels in motion to invoke section 17-7-140, MCA, by asking state agencies to submit proposals for spending reductions and by requesting that the LFC and RTIC reschedule their June meetings to give the Department of Revenue and the LFD time to gather and analyze the latest revenue numbers.

While the general fund revenue shortfall loomed large over RTIC's meeting, the committee's agenda also contained a number of additional responsibilities: primarily reviewing legislative proposals for the 2003 session submitted by the Departments of Transportation (MDT) and Revenue (DOR) and hearing updates on the progress of DOR's POINTS system.

RTIC Joins the Finance Committee to Review Budget...Topping Thursday's agenda was a joint meeting of RTIC and the LFC during which Clayton Schenck, the LFD's Fiscal Analyst, briefed both groups on the process established in 17-7-140, MCA, each committee's distinct role in the process, the specifics of the budget shortfall, the executive branch's spending reduction plan, legislative options, and the structural budget imbalance and 2005 biennium outlook. Members of both committees asked questions of Schenck and Swysgood and commented on the revenue picture and what should be done about it. A brief debate ensued on the advisability of a special legislative session to address the shortfall.

When the joint meeting adjourned, the LFC prepared to pour over the executive's spending reduction plan and RTIC took up review of agency legislation and other MDT and DOR-related matters, reserving review of revised revenue estimates for Friday.

Department of Transportation...Tim Reardon, MDT chief legal counsel, described the legislative proposals that the department plans to bring to the 2003 Legislature. Although RTIC agreed to approve for bill drafting all of the proposals, several members expressed reservations about three of them that deal with driving under the influence (DUI), open containers, and repeat DUI offenders.

As was reported in the May edition of *THE INTERIM* (see p. 11 of the May edition), the federal government is requiring states to enact laws placing the blood alcohol concentration legal limit at .08. In many states, including Montana, that limit is set at .10. The federal government will withhold highway construction money from states that do not comply with a .08 standard and will transfer construction funds to safety programs for states that do not enact specific open container and repeat offender legislation. Three of MDT's bill proposals contain these provisions. LC numbers and short titles of MDT bills authorized by RTIC for drafting are:

- LC 187 Allow transfer of money from highway special [revenue fund] to general fund<sup>1</sup>  
(This is MDT's portion of the executive's plan to shore up the general fund)
- LC 188 Clarify MDT authority to issue Garvey Bonds to speed Highway 93 construction
- LC 189 Reduce DUI blood alcohol to .08 for federal highway funds
- LC 190 Mandatory penalty provisions for repeat DUI offenders
- LC 191 Prohibit open containers in vehicles -- penalty
- LC 192 School buses in designated pullouts need not activate flashers
- LC 193 Bid bonds for highway construction set on sliding scale
- LC 194 Revise eminent domain laws to expedite determination of necessity
- LC 195 Allow MDT to lease airport facilities for 40 years
- LC 196 Generally revise laws on traffic control devices
- LC 197 Revise laws relating to pedestrian traffic
- LC 198 Revise laws related to general traffic regulation
- LC 199 Revise laws related to vehicle operating requirements
- LC 200 Revise laws related to bicycle traffic
- LC 201 Pilot program to allow MDT to consider design/build RFPs
- LC 203 Remove sunset on MDT diesel vehicle inspection authority
- LC 204 Electronic traveler information kiosks at rest areas
- LC 205 Require single trip permit for loads with overhang greater than 15 feet

MDT staff also discussed the highway special revenue fund, which is faring well with a projected fiscal year 2002 ending fund balance of \$50.2 million.

Board of Oil and Gas Conservation Report...Chapter 9, section 21, Sp.L. 1993 requires the Board of Oil and Gas Conservation to report at least once a year to the Revenue Oversight Committee regarding the implementation of SB 18, a bill that provided for reduced net proceeds tax rates and reduced severance tax rates (the taxation of oil and natural gas was generally revised in 1995) in the incremental production of oil from enhanced recovery projects. The reports were to include:

- the methods used to determine production and decline rates;
- rules adopted to implement the act;
- the number of enhanced recovery projects completed or anticipated to be completed in a year; and
- the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells.

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<sup>1</sup>LFD's analysis of MDT's portion of the Executive Spending Reduction Proposal (p. 12, Part 3 - Expenditure Reduction Plan) reads: "HB 124 requires a transfer of roughly \$2.9 million general fund each year to replace revenues now deposited to the general fund. The executive proposes to require the Department of Transportation to not spend this money and revert it back to the general fund. Implementation of this initiative would require legislative involvement to complete because state law does not specifically allow the executive to transfer portions of this state special revenue fund to the general fund."

When SB 11 (1999) and SB 10 (2001) restructured the interim committee process and renamed several of the committees, all references in the MCA to "Revenue Oversight Committee" were changed to "Revenue and Transportation Committee". References in session law (the only place this reporting requirement exists) cannot be searched electronically and were not included in the new committee's duties. When the Revenue Oversight Committee gave way to RTIC, the session law reporting requirement became obsolete. With the knowledge that this defunct requirement once existed, in April RTIC requested a more general report on the health of the oil and gas industry in Montana.

Tom Richmond, administrator of the Billings Oil and Gas Conservation Division Headquarters, delivered the report at the June meeting. Committee members found the information relevant and useful and expressed the hope that future committees would request similar information. They did, however, agree to request a committee bill (LC 202) striking the reporting requirement in session law to avoid future confusion and because the specifics of the requirement were too limited.

Department of Revenue Legislative Proposals for the 2003 Session...The committee also reviewed legislative proposals presented by the Department of Revenue. LC numbers and short titles of DOR bills authorized by RTIC for drafting are:

- LC 206 Clarify authority to enter private property for property tax audit and appraisal
- LC 207 Clarify calculation of Class 8 property tax rate reduction trigger
- LC 208 Revise method for calculating Class 12 property tax rate
- LC 209 Allow DOR access to FBI fingerprint database per federal law
- LC 210 Reinstate first-time waiver of penalty for unemployment insurance tax
- LC 211 Revise taxation of pass through entities
- LC 212 Revise special permits to sell alcohol at special events
- LC 213 Provide that certain alcohol license actions do not require DOJ investigation
- LC 214 Revise provisions relating to inheritance and estate taxes
- LC 215 Standardize relationship of when tax return due and payment of tax due
- LC 216 Minimum dollar amount for transactions on taxes and fees between DOR and payer
- LC 217 Revise elderly homeowner tax credit -- 5 year time period -- DOR record req.

In addition to its 2003 legislative proposals, DOR staff also discussed the following:

- legislation that DOR is developing with the Department of Justice to streamline the liquor licensing process;
- a task force that met to assist DOR in improving the accuracy and timeliness of the annual certification of taxable values;
- a task force that is meeting to determine the criteria that should be consistently applied in determining when the use of agricultural or forest land has changed;
- forest land valuation schedules; and
- the progress of DOR's reappraisal of all taxable property (required to be completed by December 31, 2002).



Points on POINTS...The POINTS Subcommittee joined RTIC to hear DOR's progress report on phase II of the project. When RTIC recessed for the day, the POINTS Subcommittee convened and met into Thursday evening, discussing the details of POINTS II with Department of Revenue Director Kurt Alme and DOR information technology staff.

At the conclusion of the subcommittee meeting, members agreed that although the subcommittee had served a useful purpose in generating additional dialogue with DOR and in developing a knowledge base among the members, the time had come to disband. The vote was unanimous. Alme thanked the group for its work and attention to POINTS and suggested the possibility that an executive committee may be formed which would include various stakeholders in the project and some legislators to continue to advise the department on how to proceed. (See p. 12 of this issue for additional coverage related to POINTS).

As the legislative body to which the Department of Revenue is statutorily assigned during the interim, RTIC will also continue to monitor POINTS development and implementation.

Revenue Estimates Still Iffy...RTIC's statutory responsibility under 17-7-140, MCA, reads, in part:

"Within 20 days of notification [by the budget director of the estimated amount of revenue shortfall], the revenue and transportation interim committee shall provide the budget director with any recommendations concerning the amount."

RTIC settled in Friday morning to hear from LFD staff and the executive branch on the money coming to the general fund from specific revenue sources and to make a recommendation to Budget Director Swysgood on the revenue projections that should be used when he and the governor consider agency spending reductions. Dismayed by the fluid nature of the numbers, which both LFD and Swysgood warned are changing on a daily basis, RTIC passed a motion by Sen. Cocchiarella endorsing neither set of revenue projections but recommending that Swysgood should simply use the best and most current data available when it comes time to make decisions on the agency budgets and spending reductions. RTIC asked to be kept informed of the changing revenue picture and to that end, Terry Johnson, LFD Principal Fiscal Analyst, is preparing daily updates which are e-mailed to RTIC members.

Committee to Meet in Early Fall...RTIC is scheduled to meet next on September 5 and 6. Watch for agenda information in future issues of **THE INTERIM**. If you have any questions about RTIC's June meeting or September's agenda, please contact Leanne Kurtz, RTIC staff, at (406) 444-3064 or via e-mail at lekurtz@mt.gov.

## LAW AND JUSTICE INTERIM COMMITTEE

Committee Reviews Agency Activities...The Law and Justice Interim Committee (LJIC) met in Helena on June 3 and 4. Items on the agenda included: the regular reports from the Judiciary, the Attorney General and Department of Justice, and the Department of Corrections. A representative of the Montana Chapter of the American Civil Liberties Union on the status of the settlement agreement in regard to **Langford et al. v. Racicot**. Additionally, representatives from Gallatin County solicited legislative support on a proposal for a cooperative "re-entry" program for Gallatin County. The proposal was billed as an innovative residential, treatment-oriented concept, and gained the committee's interest.

Proposed Legislation and Expenditure Reductions...The main focus of the June meeting was the committee's statutorily-required review of potential legislation proposed by the Judiciary, including the Clerk of the Supreme Court, the Attorney General, the Department of Justice, the Department of Corrections, or any entity attached to any of those agencies. The LJIC previewed approximately 50 requests for legislation and authorized the drafting, by LSD staff, of all but one of the proposals. (The committee did not authorize for drafting the proposal making a violation of the seatbelt law a primary offense.)

The LJIC revisited options to revise, including adding or repealing, statutory provisions related to the sentencing or corrections policy of the state. These policies are the primary focus of the interim study requested in House Joint Resolution No. 39 (2001). After a discussion of the issues, the committee directed staff to prepare draft legislation creating a select committee of legislators and various practitioners within the judicial and corrections systems to critically scrutinize the criminal felony statutes of the state. The purpose would be to involve the practitioners in revising the felony statutes to more appropriately reflect current thinking and experience with the judicial and corrections systems.

A secondary focus of the meeting was to hear briefings from the Departments of Justice and Corrections and from the Judiciary regarding the budget director's request for spending reductions for FY 2003. The budget director had requested agencies to identify general fund reductions at the 3 percent and 10 percent levels. The LJIC members had many questions about the near-term and long-term impacts of the proposed cuts and were told, in general, that every reduction proposal would affect programs, clients, providers, and employees directly. Indirectly, some or many of the reductions would also affect local communities through reduced provider payments or reimbursements, underserved or unserved clients, and an increased dependence on local resources, whether or not such resources are available. At the time of this writing, the budget director is still weighing the nature, scope, and magnitude of expenditure reductions for all state agencies.

General Information...The committee is scheduled to meet next on Monday and Tuesday, Sept. 9 and 10, at the state Capitol in Helena. Items anticipated to be discussed include draft legislation, draft final reports, and possibly recommendations for future

activities of the LJIC appointed during the next interim. A tentative agenda of the September meeting, when it is available, will be posted to the committee's website

For more information about any of the committee, contact Dave Bohyer by phone at (406) 444-3064 or by e-mail at [dbohyer@mt.gov](mailto:dbohyer@mt.gov), or LJIC Chairman Rep. Gail Gutsche in Missoula by phone at (406) 728-0566.

## ENVIRONMENTAL QUALITY COUNCIL

Environmental Quality Council (EQC) .....The EQC's next meeting is Tuesday, July 30. The EQC will hear an update from the Department of Fish, Wildlife, and Parks on sage grouse management. The Department of Natural Resources and Conservation will also update the Council on the renewable resource grant and loan program applications and ranking report. In addition, the EQC will also review the Department of Environmental Quality and the Department of Natural Resources and Conservation's 2003 legislative proposals. EQC subcommittees are scheduled to meet on Monday, July 29. Subcommittee activities are set out below.

Minutes from previous meetings, EQC and subcommittee work plans, agendas, and press releases may be found on the EQC website at <http://leg.mt.gov/services/lepo/index.htm>. If you have any questions or would like additional information, or to be placed on the EQC interested persons mailing list, contact the EQC office at (406) 444-3742 or [mtheisen@mt.gov](mailto:mtheisen@mt.gov).

Coal Bed Methane/Water Policy Subcommittee . . . The subcommittee will meet on July 29 at 9 a.m. in Room 102 of the Capitol. Agenda items include: a briefing on the status of litigation related to coal bed methane development in Montana, a presentation on best management practices for coal bed methane production, a review of the revised EQC Water Quality Regulation Handbook, and updates on new developments related to water policy or coal bed methane development.

For more information, contact subcommittee staff:

Coal Bed Methane --Mary Vandenbosch at (406) 444-5367 or by e-mail at [mvandenbosch@mt.gov](mailto:mvandenbosch@mt.gov).

Water Policy -- Krista Lee Evans at (406) 444-3957 or by e-mail at [kevans@mt.gov](mailto:kevans@mt.gov).

Agency Oversight/MEPA Subcommittee . . . The subcommittee will hold its final scheduled meeting of the interim on July 29 in Room 152 of the Capitol. Agenda items include: a review of agency responses to subcommittee inquiries on several topics, a brief presentation on DEQ Remediation Division staffing and funding, a review of subcommittee documents on MEPA public participation, a review of the revised and updated MEPA guide and handbook, a MEPA litigation update and summary, a discussion on the need for temporary funding for the petroleum tank release compensation fund, and final subcommittee decisions on any remaining interim topics.

For more information, contact subcommittee staff: Larry Mitchell at (406) 444-1352 or by e-mail at [lamitchell@mt.gov](mailto:lamitchell@mt.gov).

Energy Policy Subcommittee...The EQC Energy Policy Subcommittee is scheduled to meet July 29 in Room 137 of the Capitol. The subcommittee's agenda includes reviewing comments on the two subcommittee energy publications -- *The Montana Electricity Law Handbook* and the *Status of Energy in Montana*. These two educational publications are being circulated for a 30 day public comment period that started June 10, 2002, and will conclude on July 10, 2002.

For more information contact subcommittee staff: Todd Everts at (406) 444-3747 or by email at [teverts@mt.gov](mailto:teverts@mt.gov)

## DEAR MASON AND ROBERTS

**Dear Mason and Roberts:** I was a sittin' on my duff watching an old western movie called *Gunfight at the O.K. Corral* last weekend while the rain poured down outside. I admit that I couldn't always tell the bad guys from the goods guys, but they shor were a kickin' up a ruckus. I got to thinkin' about some of the headbuttin' that is done during the legislative process, and that got me to considerin' how we legislators settle our differences without the use of guns. We use conference committees instead. Things do tend to get a might messy in thar sometimes, but most everybody is able to walk away with nary a scratch. How's about givin' everyone the lowdown on the those dang conference committees by answerin' some inquiries?

Thank you kindly,  
Senator D. Holliday

**Dear Senator Holliday:** During the 2001 session, one or more conference committees were appointed for 70 bills--that's a lot of shootouts that were avoided! Since we think that conference committees are a darn sight better than fists and guns for settling things, we'd be happy to provide some details on how conference committees work.

### Q: What triggers appointment of a conference committee?

A: If the amendments made to a bill by the second house are rejected (i.e., not concurred in) by the house in which the bill originated, the originating house may request a conference committee (Joint Rule 40-170; Senate Rule 50-210; House Rule 40-220). A motion may be made to authorize the presiding officer (i.e, the Speaker of the House or President of the Senate) to appoint a conference committee to meet with a like committee from the second house to resolve the differences (Senate Rule 30-10; House Rule 10-20). If the motion is approved, the presiding officer appoints members to the conference committee, and this action is communicated to the second house in a message. The second house must then appoint a conference committee for the same purpose (Joint Rule 30-30).

A conference committee may also be appointed if either house disapproves the Governor's recommendations for amendment to a bill (Joint Rule 40-230).

**Q: What is the size and composition of a conference committee?**

A: Although the legislative rules do not specify the size of these committees, they are typically composed of three members from each house. The Speaker and President each appoint two members from the majority party and one from the minority party. Often the sponsor of the bill is appointed to the committee. In addition, the President and Speaker each appoint a chair for his or her house's committee. When the two committees meet jointly, the Senate committee chair serves as the presiding officer for the joint committee while the House committee chair serves as vice chair (Joint Rule 30-10).

**Q: I understand that there are two types of conference committees. What's the difference?**

A: A [regular] conference committee may consider only the amendments that are in dispute. It may accept or reject the disputed amendments in their entirety or further amend the disputed amendments. In contrast, a free conference committee may discuss a bill in its entirety and is not confined to the disputed amendments (Joint Rule 30-30).

**Q: How does a conference committee conduct its business?**

A: The chairs of each committee agree on the time and place of all committee meetings, and this information is announced from the rostrum. The announcement is in order at any time. However, failure to make this announcement does not make invalid the legislation under consideration (Joint Rule 30-30).

A conference committee is a joint meeting of two separate committees. Before a conference committee may transact business, a quorum consisting of a majority of the members of each committee must be present (Mason's Manual of Legislative Procedure (Mason's), sec. 770). In addition, the committees of each house vote separately; a majority of each committee must agree before any action may be taken (Joint Rule 30-20).

**Q: Let's say that a conference committee is successful in reaching an agreement on amendments to a bill. What happens next?**

A: If an agreement is reached, the conference committee generates a committee report, which is filed in each house and announced under Order of Business No. 3, reports of select committees (Senate Rule 50-110; House Rule 40-230). In the Senate, the report is placed on second reading on the next legislative day; if adopted by the Senate Committee of the Whole, it may be considered on third reading on the same day (Senate Rule 50-110). In the House, the report may be placed on second reading on any day (House Rule 40-230).

On second reading, the Senate and House may not amend the committee report; they may only adopt or reject the report in the form submitted (Mason's, sec. 770). If each house adopts the committee report on third reading, the bill as amended by the conference committee report has been passed by the Legislature, unless the bill requires more than a majority vote for final passage. If the bill requires more than a majority vote,

the House, following approval of the conference committee report on third reading, must place the final form of the legislation on third reading to determine if the required vote is obtained (House Rule 40-230).

**Q: What happens if a conference committee cannot come to agreement on the disputed amendments to a bill?**

A: If no agreement is reached, the conference committee may be discharged and another conference committee or a free conference committee appointed (Joint Rule 30-30; Mason's, sec. 771; 773). There is no limit on the number of conference committees or free conference committees that may be appointed.

**Q: What happens if a conference committee report is rejected by the Senate or House?**

A: If the House rejects a conference committee report, the committee continues to exist unless dissolved by the Speaker or by motion; the committee may file a subsequent report (House Rule 40-230). In the Senate, the committee may be discharged, and a new or free conference committee appointed (Mason's, sec. 771; 773).

*Do you have rule questions that you would like us to cover in this column? If so, send them to Lois Menzies, Legislative Services Division, PO Box 201706, Helena, MT 59620-1706 or lomenzies@mt.gov.*

## TIME AND TIDE

<u>Event</u>	<u>Days remaining</u>
Target date for completion of interim committee work (September 15, 2002)	77
General election (November 5, 2002)	128
58th Legislature convenes (January 6, 2003)	190

## BACK PAGE

### The Far Reaches

By Stephen Maly  
Legislative Research Analyst

#### THE TRIP IS ON

The British Airways jet landed at Mamas airport in Bishkek at four in the morning, in the dark. By the time we cleared customs and paid our \$30 arrival fee and loaded our voluminous bags onto vans hired by the U.S. Embassy, the dawn's early light and a light breeze helped trigger a surge of adrenalin that welled up through aging joints made even stiffer by a 12-hour flight from the hubbub of London Heathrow to the capital city of a former Soviet republic in the heart of Central Asia. As we proceeded along the long, tree-lined road from the airport, the eerie glow from the huge, hastily constructed American military airbase next to Mamas (and not visible to us) was replaced by the bright orange streaks of the rising sun across a partly cloudy sky. We had arrived in the Kyrgyz Republic; we were ready to go to work as paradiplomats on a special mission from Montana.

The "we" in this covey of Big Sky people consisted of a deuce of full-time National Guard guys, two reps from the Montana Nurses Association, a Helena philanthropist and a Russian linguist (also from Helena) to serve as his interpreter, two special education specialists, a NASA flight surgeon on loan to and from Senator Conrad Burns' office, and a comp-time documentarian from the Legislative Services Division. After being joined by an expert on post-traumatic stress disorder from the University of Montana, we spent the next nine days making the rounds, in groups of various sizes and configurations, to targeted institutions of medicine, social services, higher education, and government. The itinerary included tours of psychiatric facilities; hospital wards for mentally ill men, women, and children, respectively; as well as homes, schools, and training centers for developmentally disabled youth. One of the events most of us took part in was a conference at Bishkek Humanities University organized by Nadya Semenenko, who is working with Montana's Farm in the Dell Foundation to establish a comparable home and workplace on the outskirts of the city. Meanwhile, across town, our intrepid team of nurses were demonstrating Advanced Cardiac Lifesaving techniques to Kyrgyz medical students. "Busy" doesn't quite capture our collective experience, much of which could otherwise be characterized as awesome.

The civilian contingent on this mission were the beneficiaries of Minuteman Fellowships, a grant program to assist the National Guard's enlistment of non-military participants in the State Partnership Program (SPP), which encourages the development of economic, political, and military ties between American states and the former Soviet republics in Eastern Europe and Central Asia that are in transition toward democracy. The objectives of the SPP are to demonstrate military subordination to and support of civilian authority,

assist in the development of democratic institutions, foster market economies to help achieve economic and political stability, and to project and represent American humanitarian values. The National Guard is uniquely well-suited to implement such doctrine, since it is made up of "citizen soldiers" with jobs and professions outside the military. As the National Guard Bureau's **FY 2000 Posture Statement** sets forth, the combined influence of demonstrable military capability with lawful subservience to civil authority is "the ultimate embodiment of democratic values."

The Minuteman Fellows program is also a mechanism for engaging civilians in the Guard's humanitarian mission. In official terms, the program "fosters the further development of long term personal relationships and creates a mechanism to catalyze support for peacetime engagements from channels outside the Department of Defense. This ability to engage outside the sphere of pure military-oriented activities enhances the ability of U.S. policy to shape the international security environment." We male and female "Minutemen" were privileged to serve as unconventional force multipliers and threat reducers simultaneously. We're ready to do it again.

You may have wondered about the earlier reference to "paradiplomacy", a term I've borrowed from a wonderful old scholar from Czechoslovakia, now deceased (man and country alike), named Ivo Duchacek. In a 1984 article entitled ***The International Dimension of Subnational Self-Government***, Professor Duchacek outlines his topic as follows:

In recent decades, complex interdependence as well as domestic issues have encouraged many constituent governments of larger national polities to assert an international competence of their own, primarily in matters touching upon their respective jurisdictions, such as trade promotion, foreign investment, employment and rights of foreign workers, environmental and energy issues, and tourism. Two forms of the resulting *paradiplomacy* [emphasis added] are identified: transborder regional regimes...and "global micro-diplomacy" which bring [state and local] governments into direct contact with foreign national and constituent governments...From these activities there emerges the concept of a territorial state as a multi vocal actor."<sup>1</sup>

Earlier "Back Page" essays touched on Montana's participation in the Pacific Northwest Economic Region (PNWER) and the Montana-Alberta Bilateral Advisory Committee (MABAC) both of which are examples of what Duchacek refers to as transborder regional regimes.<sup>2</sup> The subject of this article exemplifies the other, "global micro-" variant of paradiplomatic endeavor.

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<sup>1</sup>*Publius: The Journal of Federalism* Vol. 14, Fall, 1984

<sup>2</sup>October, 2001 and June, 1999, respectively.

The group of Montana civilians who traveled this May to the other side of the globe aptly fit within Duchacek's "pattern of subnational micro-diplomacy that searches for cooperative contacts and compacts far beyond the immediate neighborhood and establishes relations with distant centers of economic and political power". However, the

*"Whereas physical proximity is the obvious main reason for transborder regionalism, awareness of universal interdependence is the major cause of global micro-diplomacy."*  
Ivo Duchacek

Montana-Kyrgyzstan connection is a special case, not foreseen by scholars before the mid-1990s, and not matched as yet by the other states whose respective National Guards have been paired up with the armies of former Soviet Republics such as Uzbekistan and Kazakhstan and Turkmenistan. The relative effervescence of Montana's partnership with the Kyrgyz has caught the attention of others inside the National Guard but also in broader circles. For example, Montana gets favorable mention in a feature article on states' global involvements in the February, 2002 issue of **State Government News**, a monthly magazine published by the Council of State Governments.<sup>3</sup> The kinds of relationships that are being forged by the Montana National Guard have less to do with economic and political power than with humanitarian impulses that may in time result in mutually beneficial economic and cultural ties between the Treasure state and a country that aspires to become the Switzerland of Central Asia.

### INTERESTS OF STATE AND NATION

There is another perspective in Professor Duchacek's analytical construct to draw from and dwell on briefly--his observation that "the contemporary nation-state speaks to the external world with more than one voice." He elaborates the point this way:

The various noncentral voices and the central voice of a nation-state may be sharply dissonant, and, therefore, confusing or even unintelligible to foreign ears; occasionally, they may invite foreign fishing in federally troubled waters. But these voices may also be basically complementary or coordinated.

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<sup>3</sup>Chris Whatley, *Building lasting relationships: In an era of insecurity, states are leading the way in creating partnerships around the world*. It is disheartening to see in a sidebar summary that Montana is not among the 31 states that have joined the State International Development Organization, the only national organization dedicated exclusively to boosting states' foreign commerce. Idaho, South Dakota, and Oregon do belong. Montana's absence is symptomatic of conditions that have hampered many states' trade programs over the years, a problem addressed in an instructive 1996 Aspen Institute book entitled **The International State: Crafting a Statewide Trade Development System**.

To paraphrase, polyphony in the foreign affairs of a federal union is often a good thing. The power brokers who live "inside the Beltway" in Washington, D.C. cannot always speak for Westerners or Southerners or California or that special breed of citizens that inhabit Butte, America. Even so, as laboratories of democracy, the states have not been the locus of much experimentation in foreign policy. The "devolution revolution" prompted by the Republican majority in Congress in 1995 did not extend to the realm of foreign affairs. Even staunch advocates for and defenders of the 10th Amendment do not question the federal government's prerogatives in matters of war and peace.<sup>4</sup>

Modern interpretations of various other constitutional provisions (such as the Commerce Clause) have placed control of foreign policy in the hands of the U.S. Congress and the office of the President. As Earl Fry reminds in his book **The Expanding Role of State and Local Governments in U.S. Foreign Affairs**, the Supreme Court spelled out the still-current dogma in 1936: "In respect of our foreign relations generally, state lines disappear." Fry continues:

The Constitution also expressly or implicitly prohibits a broad range of state or local government activities that might intrude on the exercise of authority by the national government, including subnational governments from making treaties or engaging in war. It is also generally accepted that they cannot exchange ambassadors or negotiate with foreign governments on matters of vital importance to U.S. national security.

Such general applications of constitutional principle may be the underlying reason why the U.S. Defense Attache was present during our brief discussion with General Chotbaev, who commands the Kyrgyz National Guard (an elite group that protects the President and his entourage), which together with the Ministry of Defense and the Ministry of Emergency Situations make up the military establishment of the country. At any rate, no binding commitments were made on the part of the Montana delegation, even under the influence of a ceremonial shot of vodka, which is *de rigueur* in so many friendly encounters with Kyrgyz soldiers.

While the international relations of individual American states may be of dubious (or at least ambiguous) legality, they are nonetheless a practical necessity. Notwithstanding the "generally accepted" norm that Fry alludes to, states are permitted to enter into international agreements and compacts with the consent of Congress. Moreover, as Fry observes, "Congressional silence on what state governments do in the international system generally is considered as tacit approval of such activities." There are many instances where states have formal and informal ties to foreign jurisdictions. Over 400

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<sup>4</sup>The Tenth Amendment to the U.S. Constitution holds that "The powers not delegated by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

agreements currently exist between the states and Canadian provinces, and there are dozens between U.S. and Mexican states as well. These types of arrangements are not considered legally problematic; others are.

Let me wander farther afield for a moment. Some subnational jurisdictions have pushed the envelope of state sovereignty far enough to provoke federal-level resistance, litigation, and even legislation. Twenty-seven states and 400 local governments joined in the boycott of South Africa when that country maintained a policy of apartheid. Fourteen states and dozens of cities have laws that use the so-called MacBride principles to screen procurement with companies that do business in Northern Ireland. A Massachusetts statute bars state government agencies from contracting with firms that do business in Burma. Supporters of this measure urge the distinction between a lawful exercise of purchasing power and the legally questionable imposition of a regulatory sanction against a foreign government. Moreover, advocates for the so-called Free Burma Laws insist on their legitimacy:

Because of their media impact, federal influence, multilateral connections and economic significance, state and local governments are becoming what the U.S. government is not. Collectively, they are a consistent public policy voice for human rights and democratic values, and they demonstrate the efficacy of state/local participation in the global economy. In other words, just when it appears that our federal government reaches its limits in speaking out for human rights and democratic values, the genius of our federal system reasserts itself. Cities and states are able to express the values of an American polity that is more diverse than the trade officials in Washington.<sup>5</sup>

The U.S. government does not look fondly upon such assertions; federal officials do not have an easy time with the notion that a nation-state is, as Duchacek put it, a multi-vocal actor.

Montana state government has not been down this bumpy road, although the example of the Legislature's passage of a resolution in 1997 in support of the Republic of China on Taiwan's recognition at the United Nations carries the potential for dissonance with national policy, which to date has consistently recognized the People's Republic as the sole legitimate government of China while at the same time vowing to defend Taiwan against any attack from the mainland. As yet there is no formal, documented tie between any American state and any sovereign state as these terms are understood in international relations. In this regard Montana is not unlike many other states for having established formal ties with subnational jurisdictions for the purposes of trade promotion, cultural and educational exchanges, or environmental protection. Congress, at any rate, has not raised an issue with these types of arrangements, or with participation in

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<sup>5</sup>Briefing Memo, Professor Robert Stumberg, Harrison Institute for Public Law, Georgetown University Law Center, October 23, 1997.

transnational organizations or bilateral arrangements that are designed to fulfill practical needs rather than evolve systematically toward a common or joint sovereignty.<sup>6</sup>

The National Guard's State Partnership Program is different from these conventional approaches to paradiplomatic relations, partly because it is rooted in the national security arena, and partly because it is less a function of state government per se than it is an outgrowth of the Defense Department's authority (via the President of the United States) to federalize state militias.<sup>7</sup> The interests and activities manifested in the Montana National Guard's partnership with the military in the Kyrgyz Republic do not constitute a "sister state" or "sister-country" relationship, although it is tempting to adopt this terminology as a kind of short-hand description during informal discussions. Just like the U.S. as a whole, Montana as a state has no single voice in its external relationships. And so far, the humanitarian interests being expressed by and through the Montana National Guard to people in Kyrgyzstan are wholly congruent with the U.S. national interest in helping the Kyrgyz Republic become a stable, friendly, democratic, and prosperous member of the international community.

This complementarity of state and federal purposes may persist into the future, but there is some possibility that the security interests of the United States as a global power will supersede and contradict bonds of friendship forged by Montanans. At present, for example, several prominent and widely respected non-governmental organizations based in this country as well as in Europe are increasingly critical of the way the U.S. and some of its western allies have made access to Central Asian airspace and air strips take priority over advocacy for basic human rights, economic development, and democratic reforms in all of "the Stans" in the region. There is growing skepticism that the overriding interests of these NATO countries (now including Russia) are more akin to the centuries old "Great Game" among Great Powers to exercise a dominant influence in a geostrategic area of the world than a lasting concern for the political destiny of millions of people. More succinctly, there are huge pools of oil and gas underlying much of the region, and the airfields provide launching pads for future air strikes against Iraq and other once and future enemies on the Eurasian continent.

A recent observation by an American foreign correspondent illustrates this possible dilemma in the making:

Like a beehive full of honey luring a hungry bear, tiny Kyrgyzstan is too sweet a deal for the U.S. to pass up. [The country] is ideally located for

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<sup>6</sup> Montana was not alone in urging recognition of Taiwan--at least 20 other states did likewise. The stakes will be higher for all involved if the ROC on Taiwan declares independence. Montana's "sister state" relations with Kumamoto Prefecture in Japan and Guangxi Province in the People's Republic of China, along with PNWER and MABAC are examples of federally accepted arrangements.

<sup>7</sup> See section 10-1-104, MCA.

military operations against Afghanistan as well as Iran and Iraq, the two Middle Eastern members of George W. Bush's axis of evil. Kyrgyzstan also provides the U.S. military a direct view of the vast Central Asian energy reserves and other abundant natural resources. Finally, it lies at the back doors of both Russia and China."<sup>8</sup>

Peters' and other journalists' perspectives provide a larger context in which to consider the humanitarian dimension of the State Partnership Program, but they don't overshadow the positive outcomes of our paradiplomatic exercise. The Montana-Kyrgyzstan connection has already blossomed beyond its military-to-military *raison d'être*. With the involvement of civilian nurses and physicians, local government officials, educators, agricultural experts, philanthropists and specialists in the care of developmentally disabled people, the partnership has become a blend of humanitarian assistance and cultural exchange. These added dimensions do not diminish in any way the significance of the military's primary functions.<sup>9</sup>

The role that Montanans are playing is dwarfed by the presence of the Bishkek airbase and the geopolitical purposes it may serve in the months ahead. Still, it is important to note that Montana-Kyrgyzstan relationship predates the intervention in Afghanistan and the wider War on Terrorism by 5 years. Our connections are growing--deeper, broader, and in unpredictable directions [See sidebar.] The Montana-Kyrgyzstan partnership is, in some small, subtle, but not insignificant ways, a form of inoculation against degenerative strains of Great Poweritis. We civilian participants, in league with our National Guard guides and protectors, have been injected with a profound hope that Kyrgyzstan will improve and that Montanans will have a hand in that process.

"Thank God we're exchanging people and not missiles." Montana National Guard Adjutant General John E. Prendergast

### CAMELOT...OR NOT?

For one brief shining moment, fairly early on a Friday, in a field of grass and weeds near the southern edge of Bishkek, it came to me that Kyrgyzstan could become another Camelot. I know it sounds a bit bizarre, but there was Lowell Bartels,<sup>10</sup> standing tall in his

<sup>8</sup>Ross Peters, *Asian Times* correspondent, in April 3, 2002 issue of *The Times of Central Asia* (<http://www.times.kg>).

<sup>9</sup>I had the good fortune last summer to accompany some Kyrgyz cadets to the firing ranges outside Helena and get a first-hand look and feel for what an M-60 machine gun can do to a distant target that we off-handedly dubbed "Taliban".

<sup>10</sup> Former fast food magnate, now heading up the Farm in the Dell Foundation.

customary suit and tie atop a half-finished brick building, surveying the confines of a similar brick enclosure that is destined to become--by the grace of god and people like Lowell--a castle of sorts for folks with developmental disabilities. Weeks of unceasing (and unseasonable) rain had made the grounds lustrous, but that same moisture threatens to prematurely erode the porous earthen building materials. The reddish walls bore a telltale white stain of dissolving mortar. Only a small portion of the roof had been sealed with tar before the money ran dry, construction stopped, and the rain started. To everyone present it seemed as if the project was doomed, hopeless, a sad case of bad luck and trouble in a country cursed by undeserved poverty. Nobody said anything--except King Lowell, who had the graciousness and presence of mind to sing praises to Ms. Semenenko and Montana Guardsman-turned-civilian-contractor-on-the-scene Jim Carney and their cohorts for having come so far with so little. "Never fear," Lowell proclaimed, "The center will be finished in September!"

And it probably will, thanks to the generosity of Montanans who succumb to their better instincts and step up to the dinner plates on round tables at one of the Bartels' family fund-raising dinners. The situation for Kyrgyzstan's first Farm in the Dell is emblematic of the country as a whole: struggling, determined, short of cash, very much in need of assistance, very far removed from the mainstream of trade and investment capital. It's sort of like Montana. It's the last best place in Central Asia! Somehow, in this age of globalization, we belong there. We can help them; they can help us. The relationship is asymmetrical in many ways. The Montana National Guard marshals material aid in the form of clothes and tools and medicines, and it supplies human resources in the fields of nursing, education, mental health, disaster preparedness; the Kyrgyz pay it back with incredible hospitality, good humor, and precious insight into how people can make do on precious little as long as they don't give up on hopes of making themselves and their community and their country better.

Lowell went with an interpreter to a rehabilitation "farm" for mentally ill men and later described it as "medieval". There were rats and lice, and filthy holes in the ground instead of toilets. And yet the residents stood up to greet him and insisted that he enjoy the fresh baked cookies made in honor of his visit. In short there's simply not a more congenial spot than the place where people from the Treasure State meet and mix with citizens of the Kyrgyz Republic.

### A COUNTRY AT THE TIPPING POINT

Thinking back on Arthurian legend, it was corruption that brought Camelot to ruin. Bad bureaucrats, kleptocratic cops and the sort of spiritual degeneration that can spread through a population that has suffered too prolonged a period of grasping and begging for sustenance, are what might cause Kyrgyzstan to slip backward into tyranny--that and the

incursions of barbarian invaders, who in the 21st century in this part of the world carry Kalashnikovs and corrupted interpretations of the Holy Koran.<sup>11</sup>

In a recent, best-selling book called **The Tipping Point: How Little Things Can Make a Big Difference**, author Malcolm Gladwell likens the spread of ideas, products, messages, and behaviors to that of a virus. "The name given to that one dramatic moment in an epidemic when everything can change all at once is the Tipping Point." Gladwell outlines three basic principles that undergird his theory. First, behavior is contagious. For example, watch what happens when someone yawns, or stops to help push a car that's stuck in ice and snow. Second, little causes can have big effects, like that little rock the big truck tire threw at your windshield this spring. Third, change happens not gradually, but at one dramatic moment. Picture a dam failing. (These examples, save the yawn, are not in the book, but sprang to mind while I was reading it.)

The "Tipping Point" is not a new concept; it's roughly analogous to notions of critical mass, thresholds, and boiling points. But for a variety of reasons this fresh twist of terminology seems to fit the situation in Central Asia generally, and Kyrgyzstan in particular. We know, through Jim Carney and others who have immersed themselves in the Kyrgyz community, that the country is still under the command of former Communist aparatchiks who are terminally inclined toward authoritarian controls. In the neighboring republics of Uzbekistan, Turkmenistan, Tadjikistan, and Kazakstan (with Afghanistan a mere 40 miles beyond a finger of Tadjik territory), not to mention the westernmost regions of China, repression is deepening, and the respective heads of state are using the American-led "War on Terrorism" to excuse and justify further clamping down on human rights. At the same time, virtually every person we encountered who was under the age of 35 spoke openly of the need to replace the "old guard" with new blood. They weren't talking about revolution, mind you, but they also seemed both cognizant of the risks of more peaceable rebellion and willing to take them.

I visited the Parliament one day after 40-odd peaceful (but "unauthorized") protestors had been rounded up and allegedly beaten up on police buses en route to a Bishkek jail.<sup>12</sup> In the south of the country, there had been larger-scale violence, leaving a number of people dead. On the floor of the legislative chamber, opposition deputies were railing against the government's heavy-handedness. They appeared to be speaking freely--a healthy sign. At the same time, I was informed that the President of the Republic, who rarely sets foot on legislative turf, was watching and listening to everything from a secure location in the

<sup>11</sup>Our drivers and interpreters in Bishkek referred to the traffic police as "jackals", because they routinely prey on innocent drivers who are compelled to pay bribes to avoid a ticket or something harsher. Meanwhile, Islamic extremists have infiltrated southern Kyrgyzstan.

<sup>12</sup>It is important to keep things in a global perspective; after all, in recent days Canadian police have used tear gas on protesters in Nova Scotia and denied Americans entry into Alberta on the grounds that peaceful protests at the Group of 8 industrial nations southwest of Calgary constitute an unacceptable security threat.

gallery above. Several days later, after we'd left for home, the entire cabinet was dismissed. After that, most of the ministers were brought back into office.

There's so much going on that is over my head and beyond our reach as foreign visitors, but it seems clear enough that the place could tip either way, and soon. The collapse of the Soviet Union was extraordinarily sudden; the outbreak of World War I, following an ominous contagion of mass military mobilizations, was triggered by a lone gunman's second shot at Archduke Ferdinand in Sarajevo. Could the State Partnership Program, and more particularly the Montana National Guard's interaction with the Kyrgyz military, turn out to be the minuscule concoction of contagious "ideas and products and messages and behaviors" that have a grand and salutary effect on regimes that appear to be at or near the brink of self-destructive descents into tyranny and corruption? Probably not. We're only paradiplomats. Still, if the experience of democratic freedom is indeed like a virus, Montanans are deeply infected, and the State Partnership Program is a vigorous vector.

### *Big Sky/Silk Road*

This 60-minute video, currently in production, will document the flowering relationship between Montana and the former Soviet republic of Kyrgyzstan in Central Asia under the auspices of the NATO-sponsored State Partnership Program, linking the Montana National Guard and the Kyrgyz military. This feature will be included in the retinue of TVMT programs offered to Montana PBS and cable community access TV stations in the state in 2003.

### **SIDEBAR: THE COMMON INTERESTS OF HEADWATERS STATES**

"Although small, land-locked with limited natural resources, Kyrgyzstan has been the most open, progressive and cooperative of the Central Asian republics. It is important to stability in the region and has remained a stalwart friend of the United States. The Kyrgyz Republic is a firm ally in the War on Terrorism and a significant coalition member. Its geographic location at the headwaters of major river systems in Central Asia enable it to affect critical and sensitive issues such as irrigated agriculture, electricity generation, and the environment in the downstream countries of Central Asia."

This introductory paragraph from the U.S. Agency for International Development website ([http://www.usaid.gov/regions/europe\\_eurasia](http://www.usaid.gov/regions/europe_eurasia)) on Kyrgyzstan sets the stage for some of Montana's potential economic links to Kyrgyzstan. Last February, a National Guard fellowship enabled Kyrgyz Presidential advisor Mr. Aidar Zhorobekov to meet and talk with a group of business executives and state Department of Commerce officials at the Capitol about value-added agriculture and rural electrification. In Missoula, he also visited with



Arnie Sherman at the World Trade Center to talk about how to solve environmental and transportation problems, Mr. Mark Johnson with the World Affairs Council to discuss geopolitical realities, and Mr. David Aronofsky, who teaches international law at the UM law school and realizes that Kyrgyzstan is in dire need of a new water rights regime.

More recently, a delegation of tourism development specialists from Kyrgyz visited Helena under joint auspices of the Montana Center for International Visitors in Bozeman, and at the invitation of the Helena International Affairs Council. In addition to presentations on Montana's tourism promotion programs, the delegates shared information on the burgeoning Adventure Tourism market that could draw recreationists from all over the world to both jurisdictions.



## INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED,  
ALL ROOM DESIGNATIONS ARE IN THE CAPITOL BLDG.

### JULY

July 9, Postsecondary Education Policy and Budget Subcommittee, Rm 102, 10 a.m.

July 10, HJR 41 Subcommittee, Room 137, 9:30 a.m.

July 10, Education and Local Government Committee, Room 137, 1 p.m.

July 11, Education and Local Government Committee, Room 137, 8 a.m.

July 12, Transition Advisory Committee, Room 317, 8:30 a.m.

July 18, SJR 22 Subcommittee on Health Care, Room 137

July 29, EQC Coal Bed Methane/Water Policy Subcommittee, Room 102, 9 a.m.

July 29, EQC Agency Oversight/MEPA Subcommittee, Room 152

July 29, EQC Energy Policy Subcommittee, Room 137

July 30, Environmental Quality Council, Room 102

### AUGUST

August 6-7, HJR 1 Subcommittee on Public Mental Health Services, Room 102

August 9, TAC Transmission Subcommittee

August 23, Children, Families, Health, and Human Services